

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MALCOLM KING NELSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. C06-5159RBL
CR98-592RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion To Recall Mandate based on United States v. Booker, 125 S.Ct. 738 (Jan. 12, 2005).

Having considered the entirety of the record and files herein, the Court finds and rules as follows:

Defendant seeks to have the Court vacate, set aside or correct his sentence. Defendant filed a 2255 petition on January 22, 2002 (Dkt. No. 156). This Court construes Defendant's motion as a second or successive 2255 petition. Defendant has not sought leave to file a second or successive 2255 petition with the Ninth Circuit Court of Appeals.

The Court directs the clerks' office to file Defendant's motion and attached exhibits (Dkt. #195) under case number C06-5159RBL.

The Defendant must obtain leave of the Ninth Circuit Court of Appeals before filing any

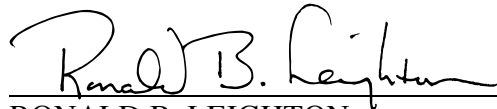
1 subsequent motions attacking his criminal conviction and sentence imposed in CR98-592RBL.¹

2 Therefore, the Court lacks jurisdiction to consider this motion and, as such, it is **DISMISSED**.

3 IT IS SO ORDERED.

4 The clerk is directed to send uncertified copies of this Order to all counsel of record, and to
5 any party appearing pro se.

6 DATED this 27th day of March, 2006.

7
8 

9 RONALD B. LEIGHTON
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22

23
24 ¹The court notes that Defendant's convictions became final before Booker. The Supreme
25 Court has not made Booker retroactive to cases on collateral review. United States v. Cruz, 423
26 F.3d 1119, 1120-21 (9th Cir. 2005).